

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ALOE VERA OF AMERICA, INC., a
Texas corporation; REX G.
MAUGHAN; RUTH G. MAUGHAN;
MAUGHAN HOLDINGS, an Arizona
corporation,

Plaintiffs-Appellants,

BUREAU OF NATIONAL AFFAIRS, INC.;
TAX MANAGEMENT, INC.,

Intervenors-Appellees,

and

GENE YAMAGATA; YAMAGATA
HOLDINGS, INC., a Nevada
corporation,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

No. 03-15265

D.C. No.
CV-99-01794-JAT
ORDER

Filed August 26, 2004

Before: J. Clifford Wallace, Alex Kozinski and
Susan P. Graber, Circuit Judges.

ORDER

Having reviewed Aloe Vera's response to our order to show cause, *see Aloe Vera of Am., Inc. v. United States*, 376 F.3d 960, 966 (9th Cir. 2004) (per curiam), and BNA's reply, we conclude that Aloe Vera's appeal was frivolous. *See Mai-*

sano v. United States, 908 F.2d 408, 411 (9th Cir. 1990) (per curiam) (“An appeal is frivolous if the results are obvious, or the arguments of error are wholly without merit.”). Accordingly, we award sanctions against Aloe Vera in the amount of BNA’s attorney’s fees for defending the appeal, including the cost of travel to San Francisco for oral argument. *See* FED. R. APP. P. 38 (“If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.”). We refer the determination of an appropriate amount of fees to the Appellate Commissioner, who shall have authority to enter an order awarding fees to BNA. *See* 9TH CIR. R. 39-1.9.

Judge Graber dissents from the award of sanctions on appeal.

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